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JUL 1 5 2005

OFFICE OF PETITIONS

In re Application of
Fiscella et al.
Application No. 09/832,129
Filed: April 11, 2001
Attorney Docket No. PZ045P1

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: **DECISION GRANTING PETITION**
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This decision is in response to applicants' 'LETTER REGARDING PATENT TERM ADJUSTMENT' timely¹ filed on December 5, 2003 requesting that the Office review the PTA on the application. This letter is being construed as an application for patent term adjustment pursuant to 37-CFR 1.705(b).

Applicants' application is **GRANTED**. The Office will adjust the PTA calculation to reflect an additional ten days of PTA at the time of the mailing of the notice of allowance. Accordingly, the proper amount of patent term adjustment at the time of the mailing of the notice of allowance is

Applicants request that the Office reconsider the PTA adjustment.

After review of the PTA calculation, the Office deems that applicants were not granted the accurate amount of PTA. The Office granted applicants three hundred and eight days (308) days of Office delay pursuant to 37 CFR 1.704(a)(1).² The Office assessed an applicant delay of thirty-four (34) days for failing to respond to the missing parts within three months. However upon review of the application, the response was in-fact filed on March 22, 2002 and accordingly the delay should have only been for period of twenty-four (24) days.³ Accordingly, at the time of the mailing of the notice of allowance, the correct amount of PTA is two hundred and eighty-four days (308-24=284).

After the mailing of this decision, the file will be forwarded to the Office of Patent Publications for a prompt issuance of the patent. The Office notes that any delays pursuant to 37 CFR 1.702(a)(4) will be added to the determination which is made at the time of the issuance of the patent. Applicant will be given notice of the change to PTA in the issue notification letter which is mailed to applicant approximately three weeks prior to issuance of the patent.

¹ Issue fee was paid on December 12, 2003.

² The delay began on June 12, 2002 and ended on April 15, 2003, a three hundred and eight day delay.

³ The delay began on February 27, 2002 and ended on March 22, 2002. The Office initially showed that the delay ended on April 1, 2002 which added an additional ten days of delay.

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Applicants have authorized the charge of \$200.00 to deposit account 08-3425. No additional fees are required.

Any question concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7757.

Kery A. Fries
for
Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examiner Policy

cc: Copy of adjusted PTA calculation